

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CENTRAL BANK OF KANSAS CITY,

Respondent,

v.

DONALD PERRY, et ux,

Appellant.

DOCKET NUMBER WD76102

Date: April 15, 2014

Appeal from:
Platte County Circuit Court
The Honorable Owens L. Hull, Jr., Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton and Anthony Rex Gabbert, JJ.

Attorneys:
William A. Mallory and David A. Jack, Overland Park, KS., for respondent.
Duane E. Schreimann, Jefferson City, MO, Amicus Curiae; Aaron J. Racine and Eric C. Beckemeier, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

CENTRAL BANK OF KANSAS CITY

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v.

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Appellant.

WD76102

Platte County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton and Anthony Rex Gabbert, JJ.

In November 2007, Appellants Donald D. Perry and N. Alice Perry (collectively “the Perrys”) executed a deed of trust to secure a loan extended by Respondent Central Bank of Kansas City to Perry & Sons, Inc. (doing business as “North Oak BP”). The loan was modified on four separate occasions between October 2009 and February 2011.

Central Bank declared Perry & Sons to be in default of the loan and filed a declaratory judgment action against the Perrys to establish the validity of the deed of trust. In response, the Perrys argued that their deed of trust had been extinguished or released due to the post-2007 modifications of the loan agreement, to which they had not consented. The circuit court granted Central Bank summary judgment, finding that the deed of trust was valid and enforceable. The Perrys appeal.

AFFIRMED.

Division One holds:

The Perrys first argue that the deed of trust imposed a guaranty obligation on them, and that the effect of the loan modifications on their obligations must be determined under the law applicable to guaranties. We disagree. The essential attribute of a guaranty is that the guarantor agrees to assume personal liability for the guaranteed debt. Here, however, the deed of trust makes clear that the Perrys were only pledging their property to secure repayment of the loan, and were assuming no personal liability for payment of the loan. The deed of trust did not establish a guaranty.

The Perrys also argue that, even if the deed of trust is viewed simply as a security instrument, it was discharged by the modifications of the loan in 2010 and 2011, which were evidenced by new “Commercial Loan Agreements,” not merely by “Debt Modification Agreements.”

The 2010 and 2011 transactions did not discharge or extinguish the Perrys deed of trust. In the deed of trust, they agreed that their property could secure not only the loan, but also its “extensions, renewals, modifications, or substitutions.” Despite the execution of new “Commercial Loan Agreements” in 2010 and 2011, those documents continue to refer to the original loan number, and the debtors also executed “Debt Modification Agreements” in which they agreed that the existing loan was being modified, rather than extinguished. The deed of trust continued in force despite the 2010 and 2011 transactions.

Opinion by: Alok Ahuja, Judge

April 15, 2014

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